

AMENDED IN SENATE JANUARY 14, 2014

AMENDED IN SENATE MAY 2, 2013

AMENDED IN SENATE APRIL 23, 2013

AMENDED IN SENATE APRIL 1, 2013

## SENATE BILL

**No. 785**

**Introduced by Senator Wolk**

*(Principal coauthor: Assembly Member Levine)*

February 22, 2013

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An act to repeal Sections 14661 and 14661.1 of the Government Code, to amend Section 32132.5 of the Health and Safety Code, and to add Article 6 (commencing with Section 10186) to Chapter 1 of Part 2 of Division 2 of, to add Chapter 4 (commencing with Section 22160) to Part 3 of Division 2 of, to repeal Sections 20133, 20175.2, 20193, 20209, 20301.5, and 20688.6 of, and to repeal Article 22 (commencing with Section 20360) of Chapter 1 of Part 3 of Division 2 of, the Public Contract Code, relating to design-build.

### LEGISLATIVE COUNSEL'S DIGEST

SB 785, as amended, Wolk. Design-build.

Existing law authorizes the Department of General Services, the Department of Corrections and Rehabilitation, and various local agencies to use the design-build procurement process for specified public works under different laws.

This bill would repeal those authorizations, and enact provisions that would authorize the Department of General Services, the Department of Corrections and Rehabilitation, and those local agencies, as defined, to use the design-build procurement process for specified public works. *The bill would authorize the Marin Healthcare District to use the*

*design-build process when contracting for the construction of a building and improvements directly related to a hospital or health facility building at the Marin General Hospital.* The bill would require moneys that are collected under these provisions to be deposited into the State Public Works Enforcement Fund, subject to appropriation by the Legislature. The bill would require specified information to be verified under penalty of perjury. By expanding the crime of perjury, the bill would impose a state-mandated local program.

*This bill would make legislative findings and declarations as to the necessity of a special statute for the Marin Healthcare District.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. It is the intent of the Legislature to consolidate
- 2 existing design-build statutes and eliminate inconsistencies in
- 3 statutory language by adopting authority of general application to
- 4 identified agencies and repealing superseded sections.
- 5 SEC. 2. Section 14661 of the Government Code is repealed.
- 6 SEC. 3. Section 14661.1 of the Government Code is repealed.
- 7 SEC. 4. Section 32132.5 of the Health and Safety Code is
- 8 amended to read:
- 9 32132.5. (a) Notwithstanding Section 32132 or any other law,
- 10 upon approval by the board of directors of the Sonoma Valley
- 11 Health Care District *or the Marin Healthcare District, as*
- 12 *applicable*, the design-build procedure described in Chapter 4
- 13 (commencing with Section 22160) of Part 3 of Division 2 of the
- 14 Public Contract Code may be used to assign contracts for the
- 15 construction of a building or improvements directly related to
- 16 construction of a hospital or health facility building at the Sonoma
- 17 Valley Hospital *or the Marin General Hospital.*
- 18 (b) For purposes of this section, all references in Chapter 4
- 19 (commencing with Section 22160) of Part 3 of Division 2 of the
- 20 Public Contract Code to “county” and “governing body” “local

agency” shall mean the Sonoma Valley Health Care District *and the Marin Healthcare District*.

(c) A hospital building project utilizing the design-build process authorized by subdivision (a) shall be reviewed and inspected in accordance with the standards and requirements of the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983 (Chapter 1 (commencing with Section 129675) of Part 7 of Division 107).

SEC. 5. Article 6 (commencing with Section 10186) is added to Chapter 1 of Part 2 of Division 2 of the Public Contract Code, to read:

#### Article 6. State Agency Design-Build Projects

10186. (a) The Legislature finds and declares that the design-build method of project delivery, using a best value procurement methodology, has been authorized for various agencies that have reported benefits from such projects including reduced project costs, expedited project completion, and design features that are not achievable through the traditional design-bid-build method.

(b) It is the intent of the Legislature that the following occur:

(1) This article provides general authorization for certain state agencies to use design-build for projects, excluding projects on the state highway system.

(2) This article shall not be deemed to provide a preference for the design-build method over other procurement methodologies.

10187. For purposes of this article, the following definitions apply:

(a) “Best value” means a value determined by evaluation of objective criteria related to price, features, functions, life-cycle costs, experience, and past performance. A best value determination may entail selection of the lowest priced technically acceptable proposals or selection of the best proposal for a fixed price established by the procuring agency, or it may consist of a tradeoff between price and other specified factors.

(b) “Construction subcontract” means each subcontract awarded by the design-build entity to a subcontractor that will perform work or labor or render service to the design-build entity in or about the construction of the work or improvement, or a subcontractor licensed by the State of California that, under subcontract to the

1 design-build entity, specially fabricates and installs a portion of  
2 the work or improvement according to detailed drawings contained  
3 in the plans and specifications produced by the design-build team.

4 (c) “Department” means the Department of General Services  
5 and the Department of Corrections and Rehabilitation.

6 (d) “Design-build” means a project delivery process in which  
7 both the design and construction of a project are procured from a  
8 single entity.

9 (e) “Design-build entity” means a corporation, limited liability  
10 company, partnership, joint venture, or other legal entity that is  
11 able to provide appropriately licensed contracting, architectural,  
12 and engineering services as needed pursuant to a design-build  
13 contract.

14 (f) “Design-build team” means the design-build entity itself and  
15 the individuals and other entities identified by the design-build  
16 entity as members of its team. Members shall include the general  
17 contractor and, if utilized in the design of the project, all electrical,  
18 mechanical, and plumbing contractors.

19 (g) “Director” means, with respect to procurements undertaken  
20 by the Department of General Services, the Director of General  
21 Services or, with respect to procurements undertaken by the  
22 Department of Corrections and Rehabilitation, the secretary of that  
23 department.

24 10188. (a) Notwithstanding any other law, the director,  
25 following notification to the State Public Works Board, may  
26 procure design-build contracts for public works projects in excess  
27 of one million dollars (\$1,000,000), awarding the contract using  
28 either the low bid or best value, provided that this article shall not  
29 apply to any projects on the state highway system.

30 (b) The director shall develop guidelines for a standard  
31 organizational conflict-of-interest policy, consistent with applicable  
32 law, regarding the ability of a person or entity, that performs  
33 services for the department relating to the solicitation of a  
34 design-build project, to submit a proposal as a design-build entity,  
35 or to join a design-build team. This conflict-of-interest policy shall  
36 apply to each department entering into design-build contracts  
37 authorized under this article.

38 10189. (a) For contracts for public works projects awarded on  
39 or after the effective date of the regulations adopted by the  
40 Department of Industrial Relations pursuant to subdivision (g) of

Section 1771.5 of the Labor Code, the department shall reimburse the Department of Industrial Relations for its reasonable and directly related costs of performing prevailing wage monitoring and enforcement on public works projects pursuant to rates established by the department as set forth in subdivision (h) of Section 1771.5 of the Labor Code. All moneys collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund, created by Section 1771.3 of the Labor Code, and shall, subject to appropriation by the Legislature, be used only for enforcement of prevailing wage requirements on those projects.

(b) In lieu of reimbursing the Department of Industrial Relations for its reasonable and directly related costs of performing monitoring and enforcement on public works projects, the department may elect to continue operating an existing previously approved labor compliance program to monitor and enforce prevailing wage requirements on the project if it has either not contracted with a third party to conduct its labor compliance program and requests and receives approval from the department to continue its existing program or it enters into a collective bargaining agreement that binds all of the contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

10190. The director shall notify the State Public Works Board regarding the method to be used for selecting the design-build entity, prior to advertising the design-build project.

10191. The procurement process for the design-build projects shall progress as follows:

(a) (1) The director shall prepare a set of documents setting forth the scope and estimated price of the project. The documents may include, but need not be limited to, the size, type, and desired design character of the project, performance specifications covering the quality of materials, equipment, workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the department's needs. The performance specifications and any plans shall be prepared by a design professional who is duly licensed and registered in California.

(2) The documents shall not include a design-build-operate contract for any project.

(b) Based on the documents prepared under subdivision (a), the director shall prepare and issue a request for qualifications in order to prequalify or short-list the design-build entities whose proposals shall be evaluated for final selection. The request for qualifications shall include, but need not be limited to, the following elements:

(1) Identification of the basic scope and needs of the project or contract, the expected cost range, the methodology that will be used by the department to evaluate proposals, the procedure for final selection of the design-build entity, and any other information deemed necessary by the director to inform interested parties of the contracting opportunity.

(2) (A) Significant factors that the department reasonably expects to consider in evaluating qualifications, including technical design and construction expertise, skilled labor force availability, and all other nonprice-related factors.

(B) For purposes of subparagraph (A), skilled labor force availability shall be deemed satisfied by the existence of an agreement with a registered apprenticeship program, approved by the California Apprenticeship Council, that has graduated at least one apprentice in each of the preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that was first deemed by the federal Department of Labor and the Department of Industrial Relations to be an apprenticeable craft within the five years prior to the effective date of this article.

(3) A standard template request for statements of qualifications prepared by the department. In preparing the standard template, the department may consult with the construction industry, the building trades and surety industry, and other agencies interested in using the authorization provided by this article. The template shall require the following information:

(A) If the design-build entity is a privately held corporation, limited liability company, partnership, or joint venture, a listing of all of the shareholders, partners, or members known at the time of statement of qualification submission who will perform work on the project.

(B) Evidence that the members of the design-build team have completed, or demonstrated the experience, competency, capability, and capacity to complete projects of similar size, scope, or complexity, and that proposed key personnel have sufficient

1 experience and training to competently manage and complete the  
2 design and construction of the project, and a financial statement  
3 that ensures that the design-build entity has the capacity to  
4 complete the project.

5 (C) The licenses, registration, and credentials required to design  
6 and construct the project, including, but not limited to, information  
7 on the revocation or suspension of any license, credential, or  
8 registration.

9 (D) Evidence that establishes that the design-build entity has  
10 the capacity to obtain all required payment and performance  
11 bonding, liability insurance, and errors and omissions insurance.

12 (E) Information concerning workers' compensation experience  
13 history and a worker safety program.

14 (F) If the proposed design-build entity is a corporation, limited  
15 liability company, partnership, joint venture, or other legal entity,  
16 a copy of the organizational documents or agreement committing  
17 to form the organization.

18 (G) An acceptable safety record. A proposer's safety record  
19 shall be deemed acceptable if its experience modification rate for  
20 the most recent three-year period is an average of 1.00 or less, and  
21 its average total recordable injury or illness rate and average lost  
22 work rate for the most recent three-year period does not exceed  
23 the applicable statistical standards for its business category or if  
24 the proposer is a party to an alternative dispute resolution system  
25 as provided for in Section 3201.5 of the Labor Code.

26 (4) (A) The information required under this subdivision shall  
27 be certified under penalty of perjury by the design-build entity and  
28 its general partners or joint venture members.

29 (B) Information required under this subdivision that is not  
30 otherwise a public record under the California Public Records Act  
31 (Chapter 3.5 (commencing with Section 6250) of Division 7 of  
32 Title 1 of the Government Code) shall not be open to public  
33 inspection.

34 (c) Based on the documents prepared as described in subdivision  
35 (a), the director shall prepare a request for proposals that invites  
36 prequalified or short-listed entities to submit competitive sealed  
37 proposals in the manner prescribed by the department. The request  
38 for proposals shall include, but need not be limited to, the following  
39 elements:

1 (1) Identification of the basic scope and needs of the project or  
2 contract, the estimated cost of the project, the methodology that  
3 will be used by the department to evaluate proposals, whether the  
4 contract will be awarded on the basis of low bid or best value, and  
5 any other information deemed necessary by the department to  
6 inform interested parties of the contracting opportunity.

7 (2) Significant factors that the department reasonably expects  
8 to consider in evaluating proposals, including, but not limited to,  
9 cost or price and all nonprice-related factors.

10 (3) The relative importance or the weight assigned to each of  
11 the factors identified in the request for proposals.

12 (4) Where a best value selection method is used, the department  
13 may reserve the right to request proposal revisions and hold  
14 discussions and negotiations with responsive proposers, in which  
15 case the department shall so specify in the request for proposals  
16 and shall publish separately or incorporate into the request for  
17 proposals applicable procedures to be observed by the department  
18 to ensure that any discussions or negotiations are conducted in  
19 good faith.

20 (d) For those projects utilizing low bid as the final selection  
21 method, the competitive bidding process shall result in lump-sum  
22 bids by the prequalified or short-listed design-build entities, and  
23 awards shall be made to the design-build entity that is the lowest  
24 responsible bidder.

25 (e) For those projects utilizing best value as a selection method,  
26 the design-build competition shall progress as follows:

27 (1) Competitive proposals shall be evaluated by using only the  
28 criteria and selection procedures specifically identified in the  
29 request for proposals.

30 (2) Pursuant to subdivision (c), the department may hold  
31 discussions or negotiations with responsive proposers using the  
32 process articulated in the department's request for proposals.

33 (3) When the evaluation is complete, the responsive proposers  
34 shall be ranked based on a determination of value provided,  
35 provided that no more than three proposers are required to be  
36 ranked.

37 (4) The award of the contract shall be made to the responsible  
38 design-build entity whose proposal is determined by the director  
39 to have offered the best value to the public.



1 (5) Notwithstanding any other provision of this code, upon  
2 issuance of a contract award, the director shall publicly announce  
3 its award, identifying the design-build entity to which the award  
4 is made, along with a written decision supporting its contract award  
5 and stating the basis of the award.

6 (6) The written decision supporting the director's contract award,  
7 described in paragraph (5), and the contract file shall provide  
8 sufficient information to satisfy an external audit.

9 10192. (a) The design-build entity shall provide payment and  
10 performance bonds for the project in the form and in the amount  
11 required by the director, and issued by a California admitted surety.  
12 The amount of the payment bond shall not be less than the amount  
13 of the performance bond.

14 (b) The design-build contract shall require errors and omissions  
15 insurance coverage for the design elements of the project.

16 (c) The department shall develop a standard form of payment  
17 and performance bond for its design-build projects.

18 10193. (a) The department, in each design-build request for  
19 proposals, may identify specific types of subcontractors that must  
20 be included in the design-build entity statement of qualifications  
21 and proposal. All construction subcontractors that are identified  
22 in the proposal shall be afforded all the protections of Chapter 4  
23 (commencing with Section 4100) of Part 1.

24 (b) Following award of the design-build contract, the  
25 design-build entity shall proceed as follows in awarding  
26 construction subcontracts with a value exceeding one-half of 1  
27 percent of the contract price allocable to construction work:

28 (1) Provide public notice of availability of work to be  
29 subcontracted in accordance with the publication requirements  
30 applicable to the competitive bidding process of the department,  
31 including a fixed date and time on which qualifications statements,  
32 bids, or proposals will be due.

33 (2) Establish reasonable qualification criteria and standards.

34 (3) Award the subcontract either on a best value basis or to the  
35 lowest responsible bidder. The process may include prequalification  
36 or short-listing. The foregoing process does not apply to  
37 construction subcontractors listed in the original proposal.  
38 Subcontractors awarded construction subcontracts under this  
39 subdivision shall be afforded all the protections of Chapter 4  
40 (commencing with Section 4100) of Part 1.

1 10194. (a) If the department elects to award a project pursuant  
2 to this article, retention proceeds withheld by the department from  
3 the design-build entity shall not exceed 5 percent if a performance  
4 and payment bond, issued by an admitted surety insurer, is required  
5 in the solicitation of bids.

6 (b) In a contract between the design-build entity and a  
7 subcontractor, and in a contract between a subcontractor and any  
8 subcontractor thereunder, the percentage of the retention proceeds  
9 withheld may not exceed the percentage specified in the contract  
10 between the department and the design-build entity. If the  
11 design-build entity provides written notice to any subcontractor  
12 that is not a member of the design-build entity, prior to or at the  
13 time the bid is requested, that a bond may be required and the  
14 subcontractor subsequently is unable or refuses to furnish a bond  
15 to the design-build entity, then the design-build entity may withhold  
16 retention proceeds in excess of the percentage specified in the  
17 contract between the department and the design-build entity from  
18 any payment made by the design-build entity to the subcontractor.

19 10195. Nothing in this article affects, expands, alters, or limits  
20 any rights or remedies otherwise available at law.

21 ~~SEC. 6. Section 20133 of the Public Contract Code is repealed.~~

22 ~~SEC. 6. Section 20133 of the Public Contract Code is repealed.~~

23 ~~20133. (a) A county, with approval of the board of supervisors,~~  
24 ~~may utilize an alternative procedure for bidding on construction~~  
25 ~~projects in the county in excess of two million five hundred~~  
26 ~~thousand dollars (\$2,500,000) and may award the project using~~  
27 ~~either the lowest responsible bidder or by best value.~~

28 ~~(b) (1) It is the intent of the Legislature to enable counties to~~  
29 ~~utilize design-build for buildings and county sanitation wastewater~~  
30 ~~treatment facilities. It is not the intent of the Legislature to~~  
31 ~~authorize this procedure for other infrastructure, including, but not~~  
32 ~~limited to, streets and highways, public rail transit, or water~~  
33 ~~resources facilities and infrastructures.~~

34 ~~(2) The Legislature also finds and declares that utilizing a~~  
35 ~~design-build contract requires a clear understanding of the roles~~  
36 ~~and responsibilities of each participant in the design-build process.~~

37 ~~(3) (A) For contracts for public works projects awarded prior~~  
38 ~~to the effective date of regulations adopted by the Department of~~  
39 ~~Industrial Relations pursuant to subdivision (g) of Section 1771.5~~  
40 ~~of the Labor Code, if the board of supervisors elects to proceed~~

1 under this section, the board of supervisors shall establish and  
2 enforce a labor compliance program containing the requirements  
3 outlined in Section 1771.5 of the Labor Code, or it shall contract  
4 with a third party to operate a labor compliance program containing  
5 the requirements outlined in Section 1771.5 of the Labor Code.  
6 This requirement shall not apply to any projects where the county  
7 or the design-build entity has entered into a collective bargaining  
8 agreement that binds all of the contractors performing work on the  
9 projects.

10 (B) For contracts for public works projects awarded on or after  
11 the effective date of regulations adopted by the Department of  
12 Industrial Relations pursuant to subdivision (g) of Section 1771.5  
13 of the Labor Code, the board of supervisors shall reimburse the  
14 department for its reasonable and directly related costs of  
15 performing prevailing wage monitoring and enforcement on public  
16 works projects pursuant to rates established by the department as  
17 set forth in subdivision (h) of Section 1771.5 of the Labor Code.  
18 All moneys collected pursuant to this paragraph shall be deposited  
19 in the State Public Works Enforcement Fund created by Section  
20 1771.3 of the Labor Code, and shall be used only for enforcement  
21 of prevailing wage requirements on those projects.

22 (C) In lieu of reimbursing the Department of Industrial Relations  
23 for its reasonable and directly related costs of performing  
24 monitoring and enforcement on public works projects, the board  
25 of supervisors may elect to continue operating an existing  
26 previously approved labor compliance program to monitor and  
27 enforce prevailing wage requirements on the project if it has either  
28 not contracted with a third party to conduct its labor compliance  
29 program and requests and receives approval from the department  
30 to continue its existing program or it enters into a collective  
31 bargaining agreement that binds all of the contractors performing  
32 work on the project and that includes a mechanism for resolving  
33 disputes about the payment of wages.

34 (e) As used in this section:

35 (1) “Best value” means a value determined by objective criteria  
36 related to price, features, functions, and life-cycle costs.

37 (2) “Design-build” means a procurement process in which both  
38 the design and construction of a project are procured from a single  
39 entity.

1     ~~(3) “Design-build entity” means a partnership, corporation, or~~  
2 ~~other legal entity that is able to provide appropriately licensed~~  
3 ~~contracting, architectural, and engineering services as needed~~  
4 ~~pursuant to a design-build contract.~~

5     ~~(4) “Project” means the construction of a building and~~  
6 ~~improvements directly related to the construction of a building,~~  
7 ~~and county sanitation wastewater treatment facilities, but does not~~  
8 ~~include the construction of other infrastructure, including, but not~~  
9 ~~limited to, streets and highways, public rail transit, or water~~  
10 ~~resources facilities and infrastructure.~~

11     ~~(d) Design-build projects shall progress in a four-step process,~~  
12 ~~as follows:~~

13     ~~(1) (A) The county shall prepare a set of documents setting~~  
14 ~~forth the scope of the project. The documents may include, but are~~  
15 ~~not limited to, the size, type, and desired design character of the~~  
16 ~~public improvement, performance specifications covering the~~  
17 ~~quality of materials, equipment, and workmanship, preliminary~~  
18 ~~plans or building layouts, or any other information deemed~~  
19 ~~necessary to describe adequately the county’s needs. The~~  
20 ~~performance specifications and any plans shall be prepared by a~~  
21 ~~design professional who is duly licensed and registered in~~  
22 ~~California.~~

23     ~~(B) Any architect or engineer retained by the county to assist~~  
24 ~~in the development of the project-specific documents shall not be~~  
25 ~~eligible to participate in the preparation of a bid with any~~  
26 ~~design-build entity for that project.~~

27     ~~(2) (A) Based on the documents prepared in paragraph (1), the~~  
28 ~~county shall prepare a request for proposals that invites interested~~  
29 ~~parties to submit competitive sealed proposals in the manner~~  
30 ~~prescribed by the county. The request for proposals shall include,~~  
31 ~~but is not limited to, the following elements:~~

32     ~~(i) Identification of the basic scope and needs of the project or~~  
33 ~~contract, the expected cost range, and other information deemed~~  
34 ~~necessary by the county to inform interested parties of the~~  
35 ~~contracting opportunity, to include the methodology that will be~~  
36 ~~used by the county to evaluate proposals and specifically if the~~  
37 ~~contract will be awarded to the lowest responsible bidder.~~

38     ~~(ii) Significant objective factors that the county reasonably~~  
39 ~~expects to consider in evaluating proposals, including cost or price~~  
40 ~~and all nonprice-related factors.~~

1     ~~(iii) The relative importance of weight assigned to each of the~~  
2 ~~factors identified in the request for proposals.~~

3     ~~(B) With respect to clause (iii) of subparagraph (A), if a~~  
4 ~~nonweighted system is used, the agency shall specifically disclose~~  
5 ~~whether all evaluation factors other than cost or price when~~  
6 ~~combined are:~~

7         ~~(i) Significantly more important than cost or price.~~

8         ~~(ii) Approximately equal in importance to cost or price.~~

9         ~~(iii) Significantly less important than cost or price.~~

10     ~~(C) If the county chooses to reserve the right to hold discussions~~  
11 ~~or negotiations with responsive bidders, it shall so specify in the~~  
12 ~~request for proposal and shall publish separately or incorporate~~  
13 ~~into the request for proposal applicable rules and procedures to be~~  
14 ~~observed by the county to ensure that any discussions or~~  
15 ~~negotiations are conducted in good faith.~~

16     ~~(3) (A) The county shall establish a procedure to prequalify~~  
17 ~~design-build entities using a standard questionnaire developed by~~  
18 ~~the county. In preparing the questionnaire, the county shall consult~~  
19 ~~with the construction industry, including representatives of the~~  
20 ~~building trades and surety industry. This questionnaire shall require~~  
21 ~~information, including, but not limited to, all of the following:~~

22         ~~(i) If the design-build entity is a partnership, limited partnership,~~  
23 ~~or other association, a listing of all of the partners, general partners,~~  
24 ~~or association members known at the time of bid submission who~~  
25 ~~will participate in the design-build contract, including, but not~~  
26 ~~limited to, mechanical subcontractors.~~

27         ~~(ii) Evidence that the members of the design-build entity have~~  
28 ~~completed, or demonstrated the experience, competency, capability,~~  
29 ~~and capacity to complete, projects of similar size, scope, or~~  
30 ~~complexity, and that proposed key personnel have sufficient~~  
31 ~~experience and training to competently manage and complete the~~  
32 ~~design and construction of the project, as well as a financial~~  
33 ~~statement that assures the county that the design-build entity has~~  
34 ~~the capacity to complete the project.~~

35         ~~(iii) The licenses, registration, and credentials required to design~~  
36 ~~and construct the project, including information on the revocation~~  
37 ~~or suspension of any license, credential, or registration.~~

38         ~~(iv) Evidence that establishes that the design-build entity has~~  
39 ~~the capacity to obtain all required payment and performance~~  
40 ~~bonding, liability insurance, and errors and omissions insurance.~~

~~(v) Any prior serious or willful violation of the California Occupational Safety and Health Act of 1973, contained in Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, or the federal Occupational Safety and Health Act of 1970 (Public Law 91-596), settled against any member of the design-build entity, and information concerning workers' compensation experience history and worker safety program.~~

~~(vi) Information concerning any debarment, disqualification, or removal from a federal, state, or local government public works project. Any instance in which an entity, its owners, officers, or managing employees submitted a bid on a public works project and were found to be nonresponsive, or were found by an awarding body not to be a responsible bidder.~~

~~(vii) Any instance in which the entity, or its owners, officers, or managing employees, defaulted on a construction contract.~~

~~(viii) Any violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), excluding alleged violations of federal or state law including the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or of Federal Insurance Contributions Act (FICA; 26 U.S.C. See: 3101 et seq.) withholding requirements settled against any member of the design-build entity.~~

~~(ix) Information concerning the bankruptcy or receivership of any member of the design-build entity, including information concerning any work completed by a surety.~~

~~(x) Information concerning all settled adverse claims, disputes, or lawsuits between the owner of a public works project and any member of the design-build entity during the five years preceding submission of a bid pursuant to this section, in which the claim, settlement, or judgment exceeds fifty thousand dollars (\$50,000). Information shall also be provided concerning any work completed by a surety during this period.~~

~~(xi) In the case of a partnership or an association that is not a legal entity, a copy of the agreement creating the partnership or association and specifying that all partners or association members agree to be fully liable for the performance under the design-build contract.~~

~~(xii) (I) Any instance in which the entity, or any of its members, owners, officers, or managing employees was, during the five years~~

1 preceding submission of a bid pursuant to this section, determined  
2 by a court of competent jurisdiction to have submitted, or legally  
3 admitted for purposes of a criminal plea to have submitted either  
4 of the following:

5 (ia) Any claim to any public agency or official in violation of  
6 the federal False Claims Act (31 U.S.C. Sec. 3729 et seq.).

7 (ib) Any claim to any public official in violation of the  
8 California False Claims Act (Article 9 (commencing with Section  
9 12650) of Chapter 6 of Part 2 of Division 3 of the Government  
10 Code).

11 (H) Information provided pursuant to this subdivision shall  
12 include the name and number of any case filed, the court in which  
13 it was filed, and the date on which it was filed. The entity may  
14 also provide further information regarding any such instance,  
15 including any mitigating or extenuating circumstances that the  
16 entity wishes the county to consider.

17 (B) The information required pursuant to this subdivision shall  
18 be verified under oath by the entity and its members in the manner  
19 in which civil pleadings in civil actions are verified. Information  
20 that is not a public record pursuant to the California Public Records  
21 Act (Chapter 3.5 (commencing with Section 6250) of Division 7  
22 of Title 1 of the Government Code) shall not be open to public  
23 inspection.

24 (4) The county shall establish a procedure for final selection of  
25 the design-build entity. Selection shall be based on either of the  
26 following criteria:

27 (A) A competitive bidding process resulting in lump-sum bids  
28 by the prequalified design-build entities. Awards shall be made to  
29 the lowest responsible bidder.

30 (B) A county may use a design-build competition based upon  
31 best value and other criteria set forth in paragraph (2). The  
32 design-build competition shall include the following elements:

33 (i) Competitive proposals shall be evaluated by using only the  
34 criteria and selection procedures specifically identified in the  
35 request for proposal. However, the following minimum factors  
36 shall each represent at least 10 percent of the total weight of  
37 consideration given to all criteria factors: price, technical design,  
38 and construction expertise, life-cycle costs over 15 years or more,  
39 skilled labor force availability, and acceptable safety record.

~~(ii) Once the evaluation is complete, the top three responsive bidders shall be ranked sequentially from the most advantageous to the least.~~

~~(iii) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing, to be the most advantageous.~~

~~(iv) Notwithstanding any provision of this code, upon issuance of a contract award, the county shall publicly announce its award, identifying the contractor to whom the award is made, along with a written decision supporting its contract award and stating the basis of the award. The notice of award shall also include the county's second and third ranked design-build entities.~~

~~(v) For purposes of this paragraph, "skilled labor force availability" shall be determined by the existence of an agreement with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in each of the preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft in the five years prior to enactment of this act.~~

~~(vi) For purposes of this paragraph, a bidder's "safety record" shall be deemed "acceptable" if its experience modification rate for the most recent three-year period is an average of 1.00 or less, and its average total recordable injury/illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category or if the bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.~~

~~(e) (1) Any design-build entity that is selected to design and build a project pursuant to this section shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the contract. This section does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.~~



1     ~~(2) Any payment or performance bond written for the purposes~~  
2     ~~of this section shall be written using a bond form developed by~~  
3     ~~the county.~~

4     ~~(f) All subcontractors that were not listed by the design-build~~  
5     ~~entity in accordance with clause (i) of subparagraph (A) of~~  
6     ~~paragraph (3) of subdivision (d) shall be awarded by the~~  
7     ~~design-build entity in accordance with the design-build process~~  
8     ~~set forth by the county in the design-build package. All~~  
9     ~~subcontractors bidding on contracts pursuant to this section shall~~  
10    ~~be afforded the protections contained in Chapter 4 (commencing~~  
11    ~~with Section 4100) of Part 1. The design-build entity shall do both~~  
12    ~~of the following:~~

13    ~~(1) Provide public notice of the availability of work to be~~  
14    ~~subcontracted in accordance with the publication requirements~~  
15    ~~applicable to the competitive bidding process of the county.~~

16    ~~(2) Provide a fixed date and time on which the subcontracted~~  
17    ~~work will be awarded in accordance with the procedure established~~  
18    ~~pursuant to this section.~~

19    ~~(g) Lists of subcontractors, bidders, and bid awards relating to~~  
20    ~~the project shall be submitted by the design-build entity to the~~  
21    ~~awarding body within 14 days of the award. These documents are~~  
22    ~~deemed to be public records and shall be available for public~~  
23    ~~inspection pursuant to this chapter and Article 1 (commencing~~  
24    ~~with Section 6250) of Chapter 3.5 of Division 7 of the Government~~  
25    ~~Code.~~

26    ~~(h) The minimum performance criteria and design standards~~  
27    ~~established pursuant to paragraph (1) of subdivision (d) shall be~~  
28    ~~adhered to by the design-build entity. Any deviations from those~~  
29    ~~standards may only be allowed by written consent of the county.~~

30    ~~(i) The county may retain the services of a design professional~~  
31    ~~or construction project manager, or both, throughout the course of~~  
32    ~~the project in order to ensure compliance with this section.~~

33    ~~(j) Contracts awarded pursuant to this section shall be valid until~~  
34    ~~the project is completed.~~

35    ~~(k) Nothing in this section is intended to affect, expand, alter,~~  
36    ~~or limit any rights or remedies otherwise available at law.~~

37    ~~(l) (1) If the county elects to award a project pursuant to this~~  
38    ~~section, retention proceeds withheld by the county from the~~  
39    ~~design-build entity shall not exceed 5 percent if a performance and~~

1 payment bond, issued by an admitted surety insurer, is required in  
2 the solicitation of bids.

3 ~~(2) In a contract between the design-build entity and the~~  
4 ~~subcontractor, and in a contract between a subcontractor and any~~  
5 ~~subcontractor thereunder, the percentage of the retention proceeds~~  
6 ~~withheld may not exceed the percentage specified in the contract~~  
7 ~~between the county and the design-build entity. If the design-build~~  
8 ~~entity provides written notice to any subcontractor who is not a~~  
9 ~~member of the design-build entity, prior to or at the time the bid~~  
10 ~~is requested, that a bond may be required and the subcontractor~~  
11 ~~subsequently is unable or refuses to furnish a bond to the~~  
12 ~~design-build entity, then the design-build entity may withhold~~  
13 ~~retention proceeds in excess of the percentage specified in the~~  
14 ~~contract between the county and the design-build entity from any~~  
15 ~~payment made by the design-build entity to the subcontractor.~~

16 ~~(m) Each county that elects to proceed under this section and~~  
17 ~~uses the design-build method on a public works project shall submit~~  
18 ~~to the Legislative Analyst's Office before September 1, 2013, a~~  
19 ~~report containing a description of each public works project~~  
20 ~~procured through the design-build process and completed after~~  
21 ~~November 1, 2009, and before August 1, 2013. The report shall~~  
22 ~~include, but shall not be limited to, all of the following information:~~

- 23 ~~(1) The type of project.~~  
24 ~~(2) The gross square footage of the project.~~  
25 ~~(3) The design-build entity that was awarded the project.~~  
26 ~~(4) The estimated and actual length of time to complete the~~  
27 ~~project.~~  
28 ~~(5) The estimated and actual project costs.~~  
29 ~~(6) Whether the project was met or altered.~~  
30 ~~(7) The number and amount of project change orders.~~  
31 ~~(8) A description of any written protests concerning any aspect~~  
32 ~~of the solicitation, bid, proposal, or award of the design-build~~  
33 ~~project, including the resolution of the protests.~~  
34 ~~(9) An assessment of the prequalification process and criteria.~~  
35 ~~(10) An assessment of the effect of retaining 5 percent retention~~  
36 ~~on the project.~~  
37 ~~(11) A description of the Labor Force Compliance Program and~~  
38 ~~an assessment of the project impact, where required.~~  
39 ~~(12) A description of the method used to award the contract. If~~  
40 ~~best value was the method, the report shall describe the factors~~

1 used to evaluate the bid, including the weighting of each factor  
2 and an assessment of the effectiveness of the methodology.

3 (13) ~~An assessment of the project impact of “skilled labor force~~  
4 ~~availability.”~~

5 (14) ~~An assessment of the design-build dollar limits on county~~  
6 ~~projects. This assessment shall include projects where the county~~  
7 ~~wanted to use design-build and was precluded by the dollar~~  
8 ~~limitation. This assessment shall also include projects where the~~  
9 ~~best value method was not used due to dollar limitations.~~

10 (15) ~~An assessment of the most appropriate uses for the~~  
11 ~~design-build approach.~~

12 (n) ~~Any county that elects not to use the authority granted by~~  
13 ~~this section may submit a report to the Legislative Analyst’s Office~~  
14 ~~explaining why the county elected not to use the design-build~~  
15 ~~method.~~

16 (o) ~~On or before January 1, 2014, the Legislative Analyst shall~~  
17 ~~report to the Legislature on the use of the design-build method by~~  
18 ~~counties pursuant to this section, including the information listed~~  
19 ~~in subdivisions (m) and (p). The report may include~~  
20 ~~recommendations for modifying or extending this section.~~

21 (p) ~~The Legislative Analyst shall complete a fact-based analysis~~  
22 ~~of the use of the design-build method by counties pursuant to this~~  
23 ~~section, utilizing the information provided pursuant to subdivision~~  
24 ~~(m) and any independent information provided by the public or~~  
25 ~~interested parties. The Legislative Analyst shall select a~~  
26 ~~representative sample of projects under this section and review~~  
27 ~~available public records and reports, media reports, and related~~  
28 ~~information in its analysis. The Legislative Analyst shall compile~~  
29 ~~the information required to be analyzed pursuant to this subdivision~~  
30 ~~into a report, which shall be provided to the Legislature. The report~~  
31 ~~shall include conclusions describing the actual cost of projects~~  
32 ~~procured pursuant to this section, whether the project schedule~~  
33 ~~was met or altered, and whether projects needed or used project~~  
34 ~~change orders.~~

35 (q) ~~Except as provided in this section, this act shall not be~~  
36 ~~construed to affect the application of any other law.~~

37 (r) ~~This section shall remain in effect only until July 1, 2016,~~  
38 ~~and as of that date is repealed, unless a later enacted statute, that~~  
39 ~~is enacted before July 1, 2016, deletes or extends that date.~~

1 SEC. 7. Section 20175.2 of the Public Contract Code is  
2 repealed.

3 SEC. 8. Section 20193 of the Public Contract Code is repealed.

4 SEC. 9. Section 20209 of the Public Contract Code is repealed.

5 SEC. 10. Section 20301.5 of the Public Contract Code is  
6 repealed.

7 SEC. 11. Article 22 (commencing with Section 20360) of  
8 Chapter 1 of Part 3 of Division 2 of the Public Contract Code is  
9 repealed.

10 SEC. 12. Section 20688.6 of the Public Contract Code is  
11 repealed.

12 SEC. 13. Chapter 4 (commencing with Section 22160) is added  
13 to Part 3 of Division 2 of the Public Contract Code, to read:

14

15 CHAPTER 4. LOCAL AGENCY DESIGN-BUILD PROJECTS

16

17 22160. (a) The Legislature finds and declares that the  
18 design-build method of project delivery, using a best value  
19 procurement methodology, has been authorized for various  
20 agencies that have reported benefits from such projects including  
21 reduced project costs, expedited project completion, and design  
22 features that are not achievable through the traditional  
23 design-bid-build method.

24 (b) It is the intent of the Legislature that the following occur:

25 (1) This chapter provides general authorization for local agencies  
26 to use design-build for projects, excluding projects on the state  
27 highway system.

28 (2) This chapter shall not be deemed to provide a preference  
29 for the design-build method over other procurement methodologies.

30 22161. For purposes of this chapter, the following definitions  
31 apply:

32 (a) “Best value” means a value determined by evaluation of  
33 objective criteria related to price, features, functions, life-cycle  
34 costs, experience, and past performance. A best value determination  
35 may entail selection of the lowest priced technically acceptable  
36 proposal or selection of the best proposal for a fixed price  
37 established by the procuring agency, or it may consist of a tradeoff  
38 between price and other specified factors.

39 (b) “Construction subcontract” means each subcontract awarded  
40 by the design-build entity to a subcontractor that will perform work

1 or labor or render service to the design-build entity in or about the  
2 construction of the work or improvement, or a subcontractor  
3 licensed by the State of California that, under subcontract to the  
4 design-build entity, specially fabricates and installs a portion of  
5 the work or improvement according to detailed drawings contained  
6 in the plans and specifications produced by the design-build team.

7 (c) “Design-build” means a project delivery process in which  
8 both the design and construction of a project are procured from a  
9 single entity.

10 (d) “Design-build entity” means a corporation, limited liability  
11 company, partnership, joint venture, or other legal entity that is  
12 able to provide appropriately licensed contracting, architectural,  
13 and engineering services as needed pursuant to a design-build  
14 contract.

15 (e) “Design-build team” means the design-build entity itself  
16 and the individuals and other entities identified by the design-build  
17 entity as members of its team. Members shall include the general  
18 contractor and, if utilized in the design of the project, all electrical,  
19 mechanical, and plumbing contractors.

20 (f) “Local agency” means the following:

21 (1) A city, county, or city and county.

22 (2) A special district that operates wastewater facilities, solid  
23 waste management facilities, or water recycling facilities.

24 (3) Any transit district, included transit district, municipal  
25 operator, included municipal operator, or transit development  
26 board, as defined in Section 99210 of the Public Utilities Code, or  
27 a consolidated agency, as defined in Section 132353.1 of the Public  
28 Utilities Code, or any joint powers authority formed to provide  
29 transit service.

30 (g) (1) For a local agency defined in paragraph (1) of  
31 subdivision (f), “project” means the construction of a building and  
32 improvements directly related to the construction of a building,  
33 and county sanitation wastewater treatment facilities, but does not  
34 include the construction of other infrastructure, including, but not  
35 limited to, streets and highways, public rail transit, or water  
36 resources facilities and infrastructure. For a local agency defined  
37 in paragraph (1) of subdivision (f) that operates wastewater  
38 facilities, solid waste management facilities, or water recycling  
39 facilities, “project” also means the construction of regional and

1 local wastewater treatment facilities, regional and local solid waste  
2 facilities, or regional and local water recycling facilities.

3 (2) For a local agency defined in paragraph (2) of subdivision  
4 (f), “project” means the construction of regional and local  
5 wastewater treatment facilities, regional and local solid waste  
6 facilities, or regional and local water recycling facilities.

7 (3) For a local agency defined in paragraph (3) of subdivision  
8 (f), “project” means a transit capital project.

9 22162. (a) Notwithstanding any other law, a local agency,  
10 with approval of its governing body, may procure design-build  
11 contracts for public works projects in excess of one million dollars  
12 (\$1,000,000), awarding the contract either the low bid or the best  
13 value, provided that this article shall not apply to any projects on  
14 the state highway system.

15 (b) The local agency shall develop guidelines for a standard  
16 organizational conflict-of-interest policy, consistent with applicable  
17 law, regarding the ability of a person or entity, that performs  
18 services for the local agency relating to the solicitation of a  
19 design-build project, to submit a proposal as a design-build entity,  
20 or to join a design-build team. This conflict-of-interest policy shall  
21 apply to each local agency entering into design-build contracts  
22 authorized under this article.

23 22163. (a) For contracts for public works projects awarded on  
24 or after the effective date of the regulations adopted by the  
25 Department of Industrial Relations pursuant to subdivision (g) of  
26 Section 1771.5 of the Labor Code, the local agency shall reimburse  
27 the department for its reasonable and directly related costs of  
28 performing prevailing wage monitoring and enforcement on public  
29 works projects pursuant to rates established by the department as  
30 set forth in subdivision (h) of Section 1771.5 of the Labor Code.  
31 All moneys collected pursuant to this subdivision shall be deposited  
32 in the State Public Works Enforcement Fund, created by Section  
33 1771.3 of the Labor Code, and shall, subject to appropriation by  
34 the Legislature, be used only for enforcement of prevailing wage  
35 requirements on those projects.

36 (b) In lieu of reimbursing the Department of Industrial Relations  
37 for its reasonable and directly related costs of performing  
38 monitoring and enforcement on public works projects, the local  
39 agency may elect to continue operating an existing previously  
40 approved labor compliance program to monitor and enforce

1 prevailing wage requirements on the project if it has either not  
2 contracted with a third party to conduct its labor compliance  
3 program and requests and receives approval from the department  
4 to continue its existing program or it enters into a collective  
5 bargaining agreement that binds all of the contractors performing  
6 work on the project and that includes a mechanism for resolving  
7 disputes about the payment of wages.

8 22164. The procurement process for the design-build projects  
9 shall progress as follows:

10 (a) (1) The local agency shall prepare a set of documents setting  
11 forth the scope and estimated price of the project. The documents  
12 may include, but need not be limited to, the size, type, and desired  
13 design character of the project, performance specifications covering  
14 the quality of materials, equipment, workmanship, preliminary  
15 plans or building layouts, or any other information deemed  
16 necessary to describe adequately the local agency's needs. The  
17 performance specifications and any plans shall be prepared by a  
18 design professional who is duly licensed and registered in  
19 California.

20 (2) The documents shall not include a design-build-operate  
21 contract for any project.

22 (b) Based on the documents prepared under subdivision (a), the  
23 local agency shall prepare and issue a request for qualifications in  
24 order to prequalify or short-list the design-build entities whose  
25 proposals shall be evaluated for final selection. The request for  
26 qualifications shall include, but need not be limited to, the  
27 following elements:

28 (1) Identification of the basic scope and needs of the project or  
29 contract, the expected cost range, the methodology that will be  
30 used by the local agency to evaluate proposals, the procedure for  
31 final selection of the design-build entity, and any other information  
32 deemed necessary by the local agency to inform interested parties  
33 of the contracting opportunity.

34 (2) (A) Significant factors that the local agency reasonably  
35 expects to consider in evaluating qualifications, including technical  
36 design and construction expertise, skilled labor force availability,  
37 and all other nonprice-related factors.

38 (B) For purposes of subparagraph (A), skilled labor force  
39 availability shall be deemed satisfied by the existence of an  
40 agreement with a registered apprenticeship program, approved by

1 the California Apprenticeship Council, that has graduated at least  
2 one apprentice in each of the preceding five years. This graduation  
3 requirement shall not apply to programs providing apprenticeship  
4 training for any craft that was first deemed by the federal  
5 Department of Labor and the Department of Industrial Relations  
6 to be an apprenticeable craft within the five years prior to the  
7 effective date of this article.

8 (3) A standard template request for statements of qualifications  
9 prepared by the local agency. In preparing the standard template,  
10 the local agency may consult with the construction industry, the  
11 building trades and surety industry, and other local agencies  
12 interested in using the authorization provided by this article. The  
13 template shall require the following information:

14 (A) If the design-build entity is a privately held corporation,  
15 limited liability company, partnership, or joint venture, a listing  
16 of all of the shareholders, partners, or members known at the time  
17 of statement of qualification submission who will perform work  
18 on the project.

19 (B) Evidence that the members of the design-build team have  
20 completed, or demonstrated the experience, competency, capability,  
21 and capacity to complete projects of similar size, scope, or  
22 complexity, and that proposed key personnel have sufficient  
23 experience and training to competently manage and complete the  
24 design and construction of the project, and a financial statement  
25 that ensures that the design-build entity has the capacity to  
26 complete the project.

27 (C) The licenses, registration, and credentials required to design  
28 and construct the project, including, but not limited to, information  
29 on the revocation or suspension of any license, credential, or  
30 registration.

31 (D) Evidence that establishes that the design-build entity has  
32 the capacity to obtain all required payment and performance  
33 bonding, liability insurance, and errors and omissions insurance.

34 (E) Information concerning workers' compensation experience  
35 history and a worker safety program.

36 (F) If the proposed design-build entity is a corporation, limited  
37 liability company, partnership, joint venture, or other legal entity,  
38 a copy of the organizational documents or agreement committing  
39 to form the organization.



1 (G) An acceptable safety record. A proposer's safety record  
2 shall be deemed acceptable if its experience modification rate for  
3 the most recent three-year period is an average of 1.00 or less, and  
4 its average total recordable injury or illness rate and average lost  
5 work rate for the most recent three-year period does not exceed  
6 the applicable statistical standards for its business category or if  
7 the proposer is a party to an alternative dispute resolution system  
8 as provided for in Section 3201.5 of the Labor Code.

9 (4) (A) The information required under this subdivision shall  
10 be certified under penalty of perjury by the design-build entity and  
11 its general partners or joint venture members.

12 (B) Information required under this subdivision that is not  
13 otherwise a public record under the California Public Records Act  
14 (Chapter 3.5 (commencing with Section 6250) of Division 7 of  
15 Title 1 of the Government Code) shall not be open to public  
16 inspection.

17 (c) Based on the documents prepared as described in subdivision  
18 (a), the local agency shall prepare a request for proposals that  
19 invites prequalified or short-listed entities to submit competitive  
20 sealed proposals in the manner prescribed by the local agency.  
21 The request for proposals shall include, but need not be limited  
22 to, the following elements:

23 (1) Identification of the basic scope and needs of the project or  
24 contract, the estimated cost of the project, the methodology that  
25 will be used by the local agency to evaluate proposals, whether  
26 the contract will be awarded on the basis of low bid or best value,  
27 and any other information deemed necessary by the local agency  
28 to inform interested parties of the contracting opportunity.

29 (2) Significant factors that the local agency reasonably expects  
30 to consider in evaluating proposals, including, but not limited to,  
31 cost or price and all nonprice-related factors.

32 (3) The relative importance or the weight assigned to each of  
33 the factors identified in the request for proposals.

34 (4) Where a best value selection method is used, the local agency  
35 may reserve the right to request proposal revisions and hold  
36 discussions and negotiations with responsive proposers, in which  
37 case the local agency shall so specify in the request for proposals  
38 and shall publish separately or incorporate into the request for  
39 proposals applicable procedures to be observed by the local agency

1 to ensure that any discussions or negotiations are conducted in  
2 good faith.

3 (d) For those projects utilizing low bid as the final selection  
4 method, the competitive bidding process shall result in lump-sum  
5 bids by the prequalified or short-listed design-build entities, and  
6 awards shall be made to the design-build entity that is the lowest  
7 responsible bidder.

8 (e) For those projects utilizing best value as a selection method,  
9 the design-build competition shall progress as follows:

10 (1) Competitive proposals shall be evaluated by using only the  
11 criteria and selection procedures specifically identified in the  
12 request for proposals.

13 (2) Pursuant to subdivision (c), the local agency may hold  
14 discussions or negotiations with responsive proposers using the  
15 process articulated in the local agency's request for proposals.

16 (3) When the evaluation is complete, the responsive proposers  
17 shall be ranked based on a determination of value provided,  
18 provided that no more than three proposers are required to be  
19 ranked.

20 (4) The award of the contract shall be made to the responsible  
21 design-build entity whose proposal is determined by the local  
22 agency to have offered the best value to the public.

23 (5) Notwithstanding any other provision of this code, upon  
24 issuance of a contract award, the local agency shall publicly  
25 announce its award, identifying the design-build entity to which  
26 the award is made, along with a written decision supporting its  
27 contract award and stating the basis of the award.

28 (6) The written decision supporting the local agency's contract  
29 award, described in paragraph (5), and the contract file shall  
30 provide sufficient information to satisfy an external audit.

31 22165. (a) The design-build entity shall provide payment and  
32 performance bonds for the project in the form and in the amount  
33 required by the local agency, and issued by a California admitted  
34 surety. The amount of the payment bond shall not be less than the  
35 amount of the performance bond.

36 (b) The design-build contract shall require errors and omissions  
37 insurance coverage for the design elements of the project.

38 (c) The local agency shall develop a standard form of payment  
39 and performance bond for its design-build projects.

1     22166. (a) The local agency, in each design-build request for  
2 proposals, may identify specific types of subcontractors that must  
3 be included in the design-build entity statement of qualifications  
4 and proposal. All construction subcontractors that are identified  
5 in the proposal shall be afforded all the protections of Chapter 4  
6 (commencing with Section 4100) of Part 1.

7     (b) Following award of the design-build contract, the  
8 design-build entity shall proceed as follows in awarding  
9 construction subcontracts with a value exceeding one-half of 1  
10 percent of the contract price allocable to construction work:

11     (1) Provide public notice of availability of work to be  
12 subcontracted in accordance with the publication requirements  
13 applicable to the competitive bidding process of the local agency,  
14 including a fixed date and time on which qualifications statements,  
15 bids, or proposals will be due.

16     (2) Establish reasonable qualification criteria and standards.

17     (3) Award the subcontract either on a best value basis or to the  
18 lowest responsible bidder. The process may include prequalification  
19 or short-listing. The foregoing process does not apply to  
20 construction subcontractors listed in the original proposal.  
21 Subcontractors awarded construction subcontracts under this  
22 subdivision shall be afforded all the protections of Chapter 4  
23 (commencing with Section 4100) of Part 1.

24     22167. (a) If the local agency elects to award a project pursuant  
25 to this article, retention proceeds withheld by the local agency  
26 from the design-build entity shall not exceed 5 percent if a  
27 performance and payment bond, issued by an admitted surety  
28 insurer, is required in the solicitation of bids.

29     (b) In a contract between the design-build entity and a  
30 subcontractor, and in a contract between a subcontractor and any  
31 subcontractor thereunder, the percentage of the retention proceeds  
32 withheld may not exceed the percentage specified in the contract  
33 between the local agency and the design-build entity. If the  
34 design-build entity provides written notice to any subcontractor  
35 that is not a member of the design-build entity, prior to or at the  
36 time the bid is requested, that a bond may be required and the  
37 subcontractor subsequently is unable or refuses to furnish a bond  
38 to the design-build entity, then the design-build entity may withhold  
39 retention proceeds in excess of the percentage specified in the

1 contract between the local agency and the design-build entity from  
2 any payment made by the design-build entity to the subcontractor.  
3 22168. Nothing in this article affects, expands, alters, or limits  
4 any rights or remedies otherwise available at law.

5 *SEC. 14. Due to the unique circumstances of the Marin*  
6 *Healthcare District, the Legislature hereby finds and declares that*  
7 *a general statute cannot be made applicable within the meaning*  
8 *of Section 16 of Article IV of the California Constitution. Therefore,*  
9 *the special legislation contained in Section 4 of this act is*  
10 *applicable only to the Marin Healthcare District.*

11 ~~SEC. 14.~~

12 *SEC. 15.* No reimbursement is required by this act pursuant to  
13 Section 6 of Article XIII B of the California Constitution because  
14 the only costs that may be incurred by a local agency or school  
15 district will be incurred because this act creates a new crime or  
16 infraction, eliminates a crime or infraction, or changes the penalty  
17 for a crime or infraction, within the meaning of Section 17556 of  
18 the Government Code, or changes the definition of a crime within  
19 the meaning of Section 6 of Article XIII B of the California  
20 Constitution.